

(2021) 12 TEL CK 0064

In the Telangana High Court

Case No : Contempt Appeal Nos. 19, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 46, 47, 48 Of 2019, Contempt Case Nos. 2495 Of 2017, 2203 Of 2018, 1498 Of 2019

District Educational Officer

APPELLANT

Vs

T.Laxmaiah

RESPONDENT

Date of Decision : 20-12-2021

Acts Referred:

Contempt Of Courts Act, 1971 — Section 10, 11, 12

Citation : (2021) 12 TEL CK 0064

Hon'ble Judges : Satish Chandra Sharma, CJ;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Regard being had to the similitude in the controversy involved in the present cases, the contempt appeals and contempt petitions were analogously heard and by this common judgment, they are being disposed of by this Court.

The contempt appeals are arising out of common order passed in contempt petitions, i.e. C.C. (TR) Nos.2 of 2017 and batch, dated 05.09.2019 alleging violation of the orders passed by the Andhra Pradesh Administrative Tribunal ('Tribunal', for short) in O.A.No.144 of 2006 and other connected matters.

The facts of the cases reveal that on 04.03.1998, a Notification was issued keeping in view the Recruitment Rules framed by the Government and notified vide G.O.Ms.No.221, Education Department, dated 16.07.1994. As per the Notification, the process of selection was for 100 marks, out of which 85 marks are for written examination and 15 marks are for interview. The Rules prescribe minimum qualifying marks as 50 for general candidates, 45 marks for backward classes and 40 marks for scheduled castes and scheduled tribes, out of 85 marks earmarked for written examination. The State Government, thereafter, issued G.O.Rt.No.618, dated 18.05.1998 relaxing the qualifying marks by 5 marks in respect of all categories and selections are finalised by reducing qualifying marks

by 5 in 17 Districts, out of 23 Districts of the combined State. The contempt cases are arising from six districts, namely Karimnagar, Warangal, Khammam and Nalgonda Districts of State of Telangana and the other two Districts, namely Ananthapur and Kadapa, are now part of State of Andhra Pradesh. The court cases were filed in respect of process of selection challenging G.O.Rt.No.618, dated 18.05.1998 before the Tribunal and the Original Applications were dismissed by the Tribunal. Thereafter, writ petition was preferred against the order of the Tribunal, i.e., W.P.No.15463 of 1998 and the same was allowed holding that there cannot be any change in the eligibility criteria once the process of recruitment has begun and G.O.Rt.No.618, dated 18.05.1998 was set aside. Then, the matter was carried to the Hon'ble Supreme Court and no stay was granted. Hence, the appointments were made without applying the relaxed standard of qualifying marks. On 17.12.1998, the Hon'ble Supreme Court has stayed the Judgment of the Hon'ble High Court and thereafter the candidates, after reducing the cut-off marks, were appointed as against the available vacancies. Finally, the Hon'ble Supreme Court has allowed the Appeals setting aside the Judgment of the Hon'ble High Court in the case of B.Ramanjini v. State of Andhra Pradesh (2002) 5 SCC 533. The appointments already made were not disturbed, though the criteria reducing the eligibility i.e., Government decision in G.O.Rt.No.618, dated 18.05.1998, was upheld. While this process was going on, the State Government took a policy decision on 23.05.2005 proposing to accommodate willing candidates as Vidya Volunteers and the Memo dated 23.05.2005 was challenged before the Tribunal in O.A.Nos.8391 of 2005, 146 of 2006 and 587 of 2006. The aforesaid Original Applications were dismissed by the Tribunal on 18.07.2008. Other batch of Original Applications challenging the same Government decision dated 23.05.2005 was allowed by the Tribunal i.e., O.A.No.144 of 2006 and batch vide Order dated 04.12.2009 and the aforesaid Order was challenged before this Court in W.P.No.23253 of 2010 and batch and a Division Bench of this Court has upheld the Order passed by the Tribunal.

The net result was that the State was required to prepare a fresh list of candidates for appointments on the basis of the Recruitment of 1998, keeping in view the Order delivered by the Tribunal dated 04.12.2009 passed in O.A.No.144 of 2006 and batch. The contempt cases which are subject matter of the contempt appeals were initially filed before the Tribunal and stood transferred to this Court on account of abolition of the Tribunals. Another important aspect of the case is that earlier also the contempt petitions were preferred before the High Court alleging violation of the Order passed by the Division Bench of this Court in W.P.No.4287 of 2010 and batch i.e., C.C.No.1814 of 2012 and the same was dismissed by this Court by an order dated 16.07.2013. The Order dated 16.07.2013 is reproduced as under:-

"This Contempt Case, under Sections 10 to 12 of the Contempt of Courts Act, 1971, is filed claiming relief to summon the respondents herein and punish them for willfully and deliberately violating the order dated 08.11.2011 passed by this Court in W.P.No.4287 of 2010.

2. In the year 1998, the Commissioner and Director of School Education issued notification, inviting applications for recruitment to various posts including the posts of Secondary Grade Teachers. The appointment and recruitment to the said posts was governed by Rules framed vide G.O.Ms.No.221 Education Department dated 16.07.1994. As per the Rules, one must secure a minimum of 50 marks out of 85, in the written test to be eligible for interview, if he/she is a candidate belonging to O.C. category. In respect of candidates belonging to B.C. category, minimum qualifying marks are 45 and for candidates belonging to S.C. and S.T. category, minimum qualifying marks are 40. After the written examination, when it was found that qualified candidates were less than the number of vacancies notified, Government issued G.O.Rt.No.618 Education Department dated 18.05.1998, reducing the qualifying marks by 5 marks in each category. Acting upon such orders, appointments were made in some Districts in the State. Challenging the said orders, some of the applicants approached this Court and this Court set aside the said orders, vide order dated 16.10.1998. As against the order of this Court, the matter was carried by way of Special Leave Petition to the Hon'ble Supreme Court and initially interim orders were passed, staying the operation of the order of this Court. Pursuant to the interim orders passed by the Hon'ble Supreme Court, Government issued orders vide G.O.Ms.No.95 Education Department dated 19.03.1999 for finalizing the selections as per the revised reduced criteria. Subsequently, the Hon'ble Supreme Court allowed the said S.L.P., setting aside the order of this Court.

3. In view of the judgment of the Hon'ble Supreme Court, it is the case of the petitioners that they are entitled to be considered for appointment as Secondary Grade Teachers. After the said judgment of the Hon'ble Supreme Court, Government issued orders vide G.O.Rt.No.583 Education Department dated 21.06.2004 to examine the representation of the unsuccessful candidates of D.S.C. 1998. Further orders were issued vide Memo No.7705/Ser.VII/2004 dated 23.05.2005 by issuing directions to the Director of School Education to give preference to D.S.C. 1998 qualified teachers while making appointments to the posts of Vidya Volunteers.

4. It is the case of the petitioners that though some persons were appointed pursuant to the orders issued by the Government vide G.O.Rt.No.615 Education Department dated 18.05.1998, at the same time, there is no reason to deny appointment to them who are otherwise eligible for appointment.

5. When the list of selected candidates pursuant to D.S.C. 1998 was not revised by appointing the petitioners herein, they approached the Tribunal by filing O.A.No.587 of 2006, which was dismissed along with other O.As., by common order dated 04.12.2009 mainly on the ground that selections relate to 1998 batch and as several other individuals who are appointed are not impleaded as party respondents, they are not entitled to any relief as prayed for. As against the common order of the Tribunal dated 04.12.2009, further Writ Petitions were filed before this Court, which were allowed by a Division Bench by order dated

08.11.2011 holding that even the petitioners are entitled for extension of same benefits, as the applicants in O.A.No.355 of 2006 and batch decided by the Tribunal on 04.12.2009.

6. In this Contempt Case, it is the case of the petitioners that in view of the order of this Court dated 08.11.2011, respondents ought to have revised the entire selection list of D.S.C. 1998 by extending appointment to them.

7. A detailed counter-affidavit is filed by the District Educational Officer, Karimnagar, wherein while denying the various allegations made by the petitioners, it is stated that the Tribunal, while disposing of the applications, relied on the observations made by the Hon'ble Supreme Court in Civil Appeal No.6461 of 1998 and batch. It is stated that in view of the said observations made by the Hon'ble Supreme Court, it is not open to them to disturb the appointments already made by replacing the candidates already appointed, by appointing the petitioners. Further, it is categorically stated that even on review, it was noticed that no candidate who secured less marks than that of the petitioners was appointed. Thus, it is stated that there is no violation of the order of this Court, attracting the provisions of the Contempt of Courts Act and prayed for dismissal of the Contempt Case.

8. Heard Sri J.R. Manohar Rao, learned counsel for the petitioners and learned Additional Advocate General for the respondents.

9. During the year 1998, when notification was issued for recruitment of Teachers, the same was governed by the Rules framed vide G.O.Ms.No.221 dated 16.07.1994. It is true that when orders were issued by the Government vide G.O.Ms.No.618 dated 18.05.1993, by which qualifying marks were reduced, the same was questioned before this Court and this Court allowed the batch of cases, but, at the same time, after filing S.L.P., before the Hon'ble Supreme Court, there were interim orders staying the operation of the order of this Court. In view of the interim orders of the Hon'ble Supreme Court passed in the S.L.P., Government issued orders vide G.O.Ms.No.95 dated 19.03.1999. In the aforesaid orders, it is categorically stated that candidates appointed on the basis of pre-revised criteria in pursuance of the order of this Court shall be continued for present, pending outcome of the judgment of the Hon'ble Supreme Court. Further, in the judgment of the Hon'ble Supreme Court in Civil Appeal No.6461 of 1998, the following observations are made:

"Selection process had commenced long back as early as in 1998 and it had been completed. The persons were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings initiated before it. The writ petitions filed by the concerned respondents ought to have been dismissed which are more or less in the nature of a public interest

litigation. It is not a case where those candidates who could not take part in the examination had challenged the same nor was any public interest, as such, really involved in this matter. It is only in the process of selection and standardisation of pass marks some relaxation had been given which was under attack. Therefore, the High Court ought not to have examined the matter at the instance of the petitioners, particularly in the absence of the parties before the court whose substantial rights to hold office came to be vitally affected."

10. In view of the observations made in the judgment of the Hon'ble Supreme Court, it is not open to replace any of the selected candidates who are not made parties to the lis. Having regard to the specified number of vacancies notified and filled and having regard to the observations made by the Hon'ble Supreme Court in the Civil Appeal referred above, it cannot be said that there is wilful violation of the order dated 08.11.2011 passed by this Court in W.P.No.4287 of 2010. If the petitioners claim that they are to be appointed in spite of the vacancies being already filled pursuant to the interim orders passed by the Hon'ble Supreme Court, they could have approached the Hon'ble Supreme Court seeking appropriate directions. But, at the same time, as the appointed candidates were not made parties and when the selection process was completed long back pursuant to the D.S.C. notification issued in the year 1998, at this point of time it is not open to the petitioners to claim appointments. Having regard to the findings recorded by the Hon'ble Supreme Court in the Civil Appeal referred above, it is also impermissible for the respondents to disturb the candidates who are already appointed and who are not made parties in various Writ Petitions. Hence, it cannot be said that there is any willful and deliberate violation of the order 08.11.2011 passed by this Court in W.P.No.4287 of 2010, so as to entertain this Contempt Case under the Contempt of Courts Act, 1971 and punish the respondents.

11. Contempt Case is accordingly dismissed. As a sequel, miscellaneous petitions, if any pending shall stand closed."

A Division Bench of this Court has dismissed the contempt petition holding that no contempt is made out. The learned Single Judge, while deciding the contempt cases i.e., Contempt Case (TR) No.2 of 2017 and batch, by an order dated 08.08.2019, has held that as the revised merit list was not drawn, the contemnors are held guilty and subsequently, by an order dated 05.09.2019, has inflicted the punishment to undergo simple imprisonment for a period of two months with fine of Rs.2,000/- (Rupees two thousand only) for violating the orders passed in O.A.No.144 of 2006 and batch. Paragraph 5 of the aforesaid order is reproduced as under:-

"5. In view of the same, the Contemnors are held guilty of violating the directions of A.P.Administrative Tribunal in O.A.Nos.144/06, 2997/10, 2206/10, 7553/10,; 10078/10, 1498/10, 1329/10, 10287/11, 1296/10, 1639/10, 9867/11, 10345/11, 3442/11, 3047/10, 3157/10, 2948/10, 355/06, 10040/11, 10077/11, 558/12 and 1882/10 wilfully and deliberately and are imposed with

punishment to undergo simple imprisonment and are imposed with punishment to undergo simple imprisonment for a period of two months with fine of Rs.2,000/- (Rupees two thousand only). The fine amount shall be paid within a period of two weeks from the date of receipt of copy of this order. However, to enable the Contemnors to avail the remedy of appeal, four weeks time is granted to them. Sentence of simple imprisonment and fine is suspended for a period of four weeks. During the period of detention, the Commissioner of School Education shall deposit the subsistence allowance @ Rs.200/- (Rupees two hundred only) per day for each of the Contemnors."

When the contempt appeals were taken up by this Court on 22.04.2021, this Court has passed a detailed order directing the appellants to explain to this Court as to how they have complied with the order passed by the Tribunal, by the High Court and by the Hon'ble Supreme Court and the order dated 22.04.2021 is reproduced as under:-

"1. The appellants are aggrieved by a common order dated 05.09.2019 passed by the learned Single Judge in a batch of contempt petitions filed by the private petitioners with the grievance that they have willfully violated the orders passed by the Andhra Pradesh Appellate Tribunal (APAT) in a batch of Original Applications. In the impugned order, the learned Single Judge has arrived at a conclusion that the appellants are guilty of violating the directions of the APAT issued in a batch of Original Applications and as a result, has imposed a punishment of simple imprisonment for a period of two months on each of the contemnors along with fine of Rs.2,000/-.

2. Vide order dated 14.10.2019, operation of the impugned order had been stayed. It is directed that subject to the appellants depositing the fine amount in the court within two weeks from today, operation of the impugned order shall continue to remain stayed.

3. Further, we have enquired from Mr. A. Sanjeev Kumar, learned Special Government Pleader to clarify the manner in which the Department has complied with the order dated 30.08.2016 passed by the Supreme Court in Special Leave Petition No.32289 of 2013 arising from the final judgment dated 16.7.2013 passed by the High Court of Andhra Pradesh in C.C.No.1814 of 2012. Learned counsel states that he may be permitted to file an affidavit clarifying the manner in which the Department has complied with the order passed by the Supreme Court. Along with the affidavit, the appellant shall file the originally finalized selection list with a copy to learned counsel for the respondents.

4. Needful shall be done within four weeks with a copy to learned counsel for the respondents.

5. Meanwhile, another copy of the counter affidavit shall be furnished by Mr. K.R.Prabhakar to learned counsel for the appellant in C.A.No.28 of 2019.

6. List on 24.6.2021."

A detailed affidavit has been filed by the District Educational Officer, Mancherla before this Court explaining the manner and method the Judgment passed by this Court has been complied with and also complete record was produced along with the affidavit filed before the Hon'ble Supreme Court. As directed by the Hon'ble Supreme Court, a detailed affidavit was filed before the Hon'ble Supreme Court and after being satisfied with the process carried out in the matter of appointments by the State Government, the Hon'ble Supreme Court has disposed of the Special Leave Petition by an Order dated 13.04.2017 and the same is reproduced as under:-

"We have perused the affidavit of the Chief Secretary, Government of Telangana dated 5th November, 2016 filed pursuant to the order of this Court dated 30th August, 2016. On such perusal, we are not inclined to continue to entertain the present Special Leave Petition any further. Accordingly, the Special Leave Petition as also all pending applications therein including the applications for impleadment is/are disposed of."

This Court has carefully perused the entire record and it is nobody's case that less meritorious persons have been appointed depriving the individuals who have secured more marks and therefore, this Court does not find any reason to uphold the order passed by the learned Single Judge. The process of recruitment is of the year 1998, persons have been appointed by the State Government and at this juncture in the year 2021 setting aside some appointments of 1998 does not arise.

After careful consideration of the affidavit filed by the appellants, this Court is of the view that there has been substantial compliance on the part of the appellants and there was no attempt by them at any point of time to wilfully disobey the orders passed by the Tribunal or by the High Court or by the Hon'ble Supreme Court and therefore, the order passed by the learned Single Judge deserves to be set aside and is accordingly set aside.

In the light of the aforesaid, the Contempt Appeals are allowed and contempt petitions are dismissed. Miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs.